

13.22.010 – Security

- A. Purpose. The permittee shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:
1. The faithful performance by the permittee of all the requirements of this Chapter;
 2. Any expenditure, damage, or loss incurred by the City occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the City issued pursuant to this Chapter; and
 3. The payment by permittee of all liens and all damages, claims, costs, or expenses that the City may pay or incur by reason of any action or non-performance by permittee in violation of this Chapter including, without limitation, any damage to public property or restoration work the permittee is required to perform pursuant to this Chapter and that the City must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the City from the permittee pursuant to this Chapter or any other applicable law, franchise, license or agreement.
- B. Form. The permittee shall provide the Security Fund to the City in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the City, or an unconditional letter of credit in a form acceptable to the City. Any surety bond or letter of credit provided pursuant to this Subsection shall, at a minimum:
1. Provide for the notification to the City at least sixty (60) days prior to expiration; and
 2. Not require the consent of the permittee prior to the collection by the City of any amounts covered by it; and
 3. Shall provide a location convenient to the City and within the State of Illinois at which it can be drawn; and
 4. Be irrevocable; and
- Run solely to the benefit of the City; and
Provide that the company issuing the financial instrument shall satisfy the City's rating criteria, as applicable:
banks (for letters of credit, bonds): Prudent Man Analysis, Inc, rating of 1, 2, or 3 (or equivalent); or
Insurance Companies (for surety bonds): A M Best Company rating of Superior (A++ and A+), Excellent (A and A-), Very Good (B++ and B+) (or equivalent),
- C. Amount. The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost plus 15% to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the Director of Public Works or his designee, and may also include reasonable, directly related costs that the City estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the City, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Director of Public Works may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (C) for any single phase.
- D. Withdrawals. The City, upon fourteen (14) days' prior written notice clearly stating the reason for, and its intention to, exercise withdrawal rights under this Subsection, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the City for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:
1. Fails to make any payment required to be made by the permittee hereunder;
 2. Fails to pay any liens relating to the facilities that are due and unpaid;
 3. Fails to reimburse the City for any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
 4. Fails to comply with any provision of this Chapter that the City determines can be remedied by an expenditure of an amount in the Security Fund.
- E. Replenishment. Within fourteen (14) days after receipt of written notice from the City that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in Subsection C of this Section.
- F. Interest. The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the City, upon written request for said withdrawal to the City, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection C of

this Section.

- G. Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the City for failure by the permittee to comply with any provisions of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.
- H. Rights Not Limited. The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by this Chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the City may have. Notwithstanding the foregoing, the City shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.